IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH MARCH 2007 / 8TH CHAITHRA 1929

Crl.MC.No. 983 of 2007()

CP.18/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR

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PETITIONER: 5TH ACCUSED

SUBISH K.S., S/O.SUBASH, KANNOLY HOUSE,
THEVAR ROAD, CHIRAKKAL.

BY ADV. SRI.P.K.ANIL

RESPONDENTS: COMPLAINANT STATE

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1. DEPUTY SUPERINTENDENT OF POLICE,
IRINJALAKUDA POLICE STATION.

2. STATE REP; BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.983 of 2007

Dated this the 28th day of March, 2007

ORDER

The petitioner is the 5th accused in a prosecution, inter alia, under Section 3 (2)(V) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. All the co-accused have already faced trial. They have been found not guilty and acquitted. Even the alleged victim did not support the prosecution case, it is submitted. The petitioner was not available for trial and therefore the case against him has been split up. The petitioner now wants to appear before the learned Magistrate. He apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In as much as the offence under Section 3 of the SC/ST (Prevention of Atrocities) Act is one exclusively triable by the Court of Session, the learned Magistrate may not consider the application for bail at all, it is submitted.

2. It is for the petitioner to appear before the learned Magistrate and explain why he could not appear before the learned Magistrate earlier. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously.

3. The apprehension that the learned Magistrate may abdicate his power and jurisdiction to consider the bail application

merely because there is an allegation under Section 3 of the SC/ST (Prevention of Atrocities) Act does not also appear to be reasonable. This Court has on many occasions in **Ali v. State of Kerala** [2000(2) KLT 280], **Shanu v. State of Kerala** [200(3) KLT 452], **Krishnakumar v. State of Kerala** [2005(1) KLD (Cri.42] and **P.P.Kader v. State of Kerala** [2005(1) KLD (Cri.250] taken the view that the mere fact that the offence is triable by the Court of Session is no reason for the Magistrate to abdicate his jurisdiction to consider the application for bail. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This Crl.M.C is, in these circumstances, dismissed. But with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself. The learned Magistrate must take expeditious step for committal of the case also.

5. Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-